


FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

SEP 25 2014

**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY**

PSI SYSTEMS, INC. D/B/A ENDICIA,

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Plaintiff,

v.

Civil Action No.: 1:14-cv-750-LY

AUCTANE L.L.C. D/B/A SHIPSTATION,

Defendant.

STIPULATION OF FACTS FOR PRELIMINARY INJUNCTION HEARING

Plaintiff PSI Systems, Inc., d/b/a Endicia, (“Endicia”) and Defendant Auctane L.L.C., d/b/a ShipStation, (“ShipStation”) submit the following stipulations for the purpose of preliminary injunction hearing on September 25, 2014.

1. Endicia is a California corporation with its principal office located at 385 Sherman Avenue, Palo Alto, California 94306.
2. ShipStation is a Texas limited liability company with its principal office located at 2815 Exposition Blvd., Austin, Texas 78703.
3. Diversity jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because Endicia and ShipStation are citizens of different states and the amount in controversy exceeds \$75,000.00, excluding interest and costs.
4. This Court has personal jurisdiction over ShipStation because ShipStation is a citizen of the State of Texas and conducts systematic and continuous business in the State of Texas.
5. Venue is proper pursuant to 28 U.S.C. § 1391 because ShipStation is a resident in the Western District of Texas.
6. Endicia is in the businesses of: (1) shipping and mail software automation, and (2) postage evidencing supporting the entire line of United States Postal Service (“USPS”) products

6. Endicia is in the businesses of: (1) shipping and mail software automation, and (2) postage evidencing supporting the entire line of United States Postal Service (“USPS”) products allowing USPS customers to produce the entire spectrum of USPS shipping labels complete with tracking, postage, and insurance.

7. ShipStation was launched in September 2011. ShipStation is a web-based software solution designed to help online retailers organize, fulfill and ship their orders quickly and easily.

8. Endicia and ShipStation have done business with each other since at least July 2011.

9. PC Postage is approved third-party vendor software that mailers can use to pay for and print their postage using a computer, printer, and internet connection. The last PC Postage vendor approved by USPS was in the year 2000. There are three approved PC Postage vendors: Stamps.com, Pitney Bowes, and Endicia.

10. Endicia has various agreements with USPS pursuant to which Endicia is an approved postage provider. One such agreement allows Endicia to license other software providers to embed the ELS service in the applications they provide their customers in order to allow customers to print their own shipping labels with appropriate postage. Endicia owns the entire right, title and sole interest in and to the ELS service.

11. Endicia’s ELS service is a proprietary software program which allows the issuance to customers of a complete shipping label, including postage, destination address, return address, tracking information and delivery confirmation.

12. On or about August 1, 2011, Endicia and ShipStation entered into a valid and enforceable agreement (“2011 Agreement”) that allowed ShipStation to embed the ELS service

in the applications it provides its customers in order to allow customers to print their own shipping labels with appropriate postage, granted a license to the ELS service from Endicia to ShipStation, and provided other services from Endicia to ShipStation.

13. On or about November 22, 2013, Endicia and ShipStation entered into a valid and enforceable agreement (“2013 Agreement”) that terminated, replaced, and superseded the 2011 Agreement. The 2013 Agreement allowed ShipStation to embed the ELS service in the applications it provides its customers in order to allow customers to print their own shipping labels with appropriate postage, granted a license to the ELS service from Endicia to ShipStation, and provided other services from Endicia to ShipStation. As defined in both the 2011 and 2013 Agreements, a “Customer” has the meaning set forth in Paragraph A of Recitals: Endicia has various agreements with the USPS pursuant to which Endicia is an approved postage provider. One such agreement (the “USPS Agreement”) allows Endicia to license other software providers to embed the Endicia Label Server service described in more detail in Exhibit A attached hereto (“ELS”) in the application(s) they provide their customers (“Customers”) in order to allow Customers “to print their own shipping labels with appropriate postage.”

14. The 2013 Agreement includes the following valid and enforceable remedies provision:

7.3 Remedies. Each Party acknowledges that the other Party may suffer irreparable damage in the event of any breach of the provisions of this Article 7. Accordingly, in such event, a Party will be entitled to temporary, preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against the Party who has breached or threatened to breach this Article 7.

15. The 2013 Agreement includes the following valid and enforceable non-solicitation provision:

7.7 Non-Solicitation of Customers. Endicia will not use any information obtained as a result of this Agreement to solicit Customers of Partner with respect to services or Products substantially similar to those provided to such Customer

by Partner. Partner will not use any information obtained as a result of this Agreement to solicit Customers of Endicia with respect to services or Products substantially similar to those provided to such Customer by Endicia.

16. The 2013 Agreement includes the following valid and enforceable choice-of-law provision:

10.9 Governing Law and Forum. This Agreement shall be governed by the laws of the State of Delaware, excluding its conflict of laws rules.

17. Endicia has a valid and enforceable agreement with ShipStation. The 2013 Agreement does not include an exclusivity clause, or a promise by ShipStation to bring new customers to Endicia.

18. On or about April 23, 2010, Endicia and Rapid Enterprises, Inc., d/b/a “Express One” or “Express1,” (hereinafter “Express One” or “Express 1”) entered into a valid and enforceable agreement (“Express One Agreement”) that allowed Express One to embed the ELS service in the applications it provides its customers in order to allow customers to print their own shipping labels with appropriate postage, granted a license to the ELS service from Endicia to Express One, and provided other services from Endicia to Express 1. As defined in Recital A of the Express One Agreement, a “Customer” is one to whom software providers (e.g., Express One) provide applications such that the Customer may “print their own shipping labels with appropriate postage” using the Endicia ELS service.

19. On or about August 13, 2010, Endicia and Express One entered into a valid and enforceable agreement (the “Sales, Marketing and Technology Integration Agreement”) that incorporated the Express One ELS Agreement and expanded the parties’ relationship for additional sales, marketing and technology reasons.

20. From the time of their 2011 Agreement, until at least the end of June 2014, customers of ShipStation who used Express One to get discounted pricing were provided USPS shipping labels using Endicia's ELS service through Express One's system, except for customers of ShipStation who had accounts with Stamps.com or were referred to ShipStation by Stamps.com. In circumstances where customers had accounts with Stamps.com or were referred to ShipStation by Stamps.com -- which constituted less than 10% of the total transactions involving Express One -- customers of ShipStation who purchased discounted postage from Express One were provided USPS shipping labels using Stamps.com's Web Services ("SWS").

21. On June 10, 2014, Stamps.com entered into a Membership Interest Purchase Agreement with ShipStation and the owners of all of the equity interests of ShipStation. On the same date, Stamps.com and ShipStation consummated the purchase transaction contemplated by the Membership Interest Purchase Agreement. Stamps.com acquired 100% of the equity interests of ShipStation. Stamps.com acquired ShipStation for up-front consideration of \$50 million in cash plus performance-linked earn-out consideration of up to 768,900 shares of Stamps.com common stock. As of the close of acquisition, ShipStation is a fully-owned, subsidiary of Stamps.com. The performance-linked earn-out payment of Stamps.com shares to former equity members of ShipStation is based on the achievement of certain financial measures within a future time period. There are two future periods in which the earn-out payment will be calculated. The first earn-out period is based on the achievement of certain financial measures during the six months ending December 31, 2014. The second earn-out period is based on the achievement of certain financial measures during the twelve months ending December 31, 2015. The range of Stamps.com shares available for the performance-linked earn-out for both periods

is between 576,675 to 768,900 shares, provided a minimum threshold for the financial measures is achieved.

22. Nathan Jones and Jason Hodges are eligible for performance-linked earn-out payment of Stamps.com shares.

23. Part of the performance-linked earn-out consideration rewards ShipStation executives for increasing the number of customers who use Stamps.com's SWS.

24. On Friday, June 25, 2014, Nathan Jones sent Rick Hernandez of Endicia an email which stated, "Nothing has changed on our end with regards to Endicia and existing accounts inside of ShipStation."

25. On July 10, 2014, Express 1 amended one of its agreements with ShipStation so that Express 1 would pay ShipStation an additional 7 cents per domestic transaction for all transactions for Express 1 customers wherein the postage labels were obtained from Stamps.com through Express 1.

26. On July 22 or 23, 2014, Express 1 CFO, Jim Bowers, authorized \$100,000 to fund 20 new Stamps.com meters, increasing the number of Express 1's funded Stamps.com meters from approximately 45 funded meters to 65 funded meters.

27. On or about July 23, 2014, Jason Hodges made a software change that caused approximately 3600 to 3900 Express 1 accounts to be switched on the back end from printing Endicia labels to printing Stamps.com labels.

28. ShipStation did not contact or make any request of any of the approximately 3600 to 3900 customers whose Express 1 accounts were switched prior to making the switch.

29. Prior to the switch, no one from ShipStation told any representative of Endicia that the switch to some ShipStation customers' Express One accounts was going to occur.

Dated: September 25, 2014

By: 

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies on this 25th day of September, 2014, that all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

/s/ Joseph J. Krasovec, III

Joseph J. Krasovec, III

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